



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

June 8, 2020

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Dear \_\_\_\_\_ :

I am responding to your inquiry addressed to President Trump dated May 11, 2020. You expressed concern that you will have unused amounts in your health flexible spending arrangement (FSA) because services are not open due to the 2019 Novel Coronavirus (COVID-19). You asked for an extension to use the amounts in your health FSA, which are generally required to be used during the plan year.

The Internal Revenue Service issued Notice 2020-29 on May 12, 2020 (available at <https://www.irs.gov/pub/irs-drop/n-20-29.pdf>), which permits an employer to amend a section 125 cafeteria plan to extend the claims period for health FSAs to the end of 2020. The Notice also permits an employer to amend a section 125 cafeteria plan to provide employees with increased flexibility to make mid-year election changes to their health FSAs during 2020, including revoking an election or increasing or decreasing an existing election. Although the Notice permits these amendments, an employer is not required to make them.

Notice 2020-33 (available at <https://www.irs.gov/pub/irs-drop/n-20-33.pdf>) was released together with Notice 2020-29. Notice 2020-33 increases the carryover limit for unused health FSA amounts from \$500 to \$550. Additionally, the Notice permits an employer to amend a section 125 cafeteria plan to adopt the increase in the carryover limit, although an employer is not required to make this amendment.

I hope this information is helpful. If you have additional questions, please contact me or  
at .

Sincerely,

Denise Trujillo  
Branch Chief, Health and Welfare Branch  
Office of Associate Chief Counsel  
(Employee Benefits, Exempt Organizations, and  
Employment Taxes)